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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

TONY REDMAN,

Defendant and Appellant.

D041339

(Super. Ct. No. SCD166680)

APPEAL from a judgment of the Superior Court of San Diego County, Frank A. Brown, Judge. Affirmed as modified.

After the trial court denied a motion to suppress his statements (*Miranda v. Arizona* (1966) 384 U.S. 436), a jury convicted Tony Redman of possessing cocaine base (Health & Saf. Code, § 11350, subd. (a)) and possessing narcotics paraphernalia (Health & Saf. Code, § 11364). In a bifurcated hearing Redman admitted a strike prior (Pen. Code, §§ 667, subds. (b)-(i), 668, 1170.12) and serving three prior prison terms (Pen.

Code, §§ 667.5, subd. (b), 668). The court denied a motion to dismiss the strike prior and sentenced Redman to prison for four years: double the two-year middle term for possessing a controlled substance with a strike prior. It stayed sentence on the prior prison term enhancements and sentenced him to 279 days with 279 days' credit for time served for possessing narcotics paraphernalia.¹

FACTS

On April 4, 2002, San Diego Police Officer Fernando Mercado saw Redman drinking from a 24-ounce can of beer while standing on the sidewalk in the area of Fourth and F Streets. Mercado arrested him for drinking in public. Mercado found a glass pipe he believed to be a rock cocaine pipe in Redman's pocket. Mercado asked Redman if he had any drugs in his pocket and Redman replied, "Yes, in my left pant pocket." Officer Huys searched Redman's pocket and found .06 grams of rock cocaine.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible but not arguable issues: (1) whether the trial court abused its discretion in denying probation; (2) whether

¹ It is well settled that when the court chooses not to impose sentence on a prior prison term enhancement it has the power to strike, but not stay, the enhancement. (*People v. Jones* (1992) 8 Cal.App.4th 756, 758.) Because this principle is not arguable we do not deem further briefing on the issue necessary.

the trial court abused its discretion in denying the request to dismiss the strike prior; and (3) whether Redman's trial counsel provided effective assistance.

We granted Redman permission to file a brief on his own behalf. He has responded. He admits there is no arguable appellate issue but claims that outside the record the court caused him to believe he would obtain help for his drug problem if he took the case to trial rather than entering a guilty plea with a stipulated 32-month sentence, the public defender did not allow him to testify, and he is the victim of a racially prejudiced judicial system. However, the record does not support reversal because of improper statements by the court, ineffective assistance of counsel, or racial bias in the judicial system. When reviewing an appeal we are limited to the record before us. (*People v. Green* (1979) 95 Cal.App.3d 991, 1001.) If Redman wishes to contest his conviction on grounds beyond the record, he should do so by a habeas corpus petition filed in the trial court. (See *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

A review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, including the possible issues referred to pursuant to *Anders v. California, supra*, 386 U.S. 738, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Redman on this appeal.

DISPOSITION

The judgment is modified by striking the three prior prison term enhancements and as so modified is affirmed.

McDONALD, J.

WE CONCUR:

HUFFMAN, Acting P. J.

O'ROURKE, J.